UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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THOMAS W. CHARRON, Jr., Individually, and as Trustee of the Thomas W. Charron, Jr., Grantor Retained Annuity Trust, dated July 8, 2010,

Plaintiff,

v. 12 CV 6837 (WHP)

SALLYPORT GLOBAL HOLDINGS, INC., et al.,

Defendants.

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New York, N.Y.
February 7, 2014
11:30 a.m.

Before:

HON. WILLIAM H. PAULEY III,

District Judge

APPEARANCES

BAILEY & GLASSER LLP
Attorneys for Plaintiff
BY: ATHANASIOS BASDEKIS
BRIAN A. GLASSER

HUSCH BLACKWELL LLP
Attorneys for Defendants
BY: BRIAN P. WAAGNER

(Case called)

THE COURT: Good morning.

MR. BASDEKIS: Good morning. Athanasios Basdekis and Brian Glasser, from Bailey & Glasser, for the plaintiff.

MR. WAAGNER: Good morning, your Honor. Brian Waagner, on behalf of defendants.

THE COURT: I have various motions *in limine* before me. Who wants to be heard?

MR. BASDEKIS: Your Honor, we have one pending motion *in limine* and I believe it presents a straightforward issue and so it makes sense to us to begin with that motion.

This is a motion which seeks to exclude the testimony of any other expert witness or any other expert opinion testimony other than the testimony of Jim Hitchner, who is the one expert that the defendants retained in this case. Under Rule 26, obviously, a party's got to disclose the identity of the expert witnesses to be used during a case and also at trial. Moreover, a witness not disclosed under Rule 26(a)(2)(A), may not provide opinion testimony based on scientific, technical, or specialized knowledge. That's Rule 701(c).

Defense in this case disclosed one expert, Jim Hitchner. They now apparently also seek to include expert testimony from Andy Smith, Tom Campbell, Doug Lake, and Scott Gold. We've argued Hitchner should be the only one to present

testimony related to the value of SGH, the value of KSI, or the role of Brathwaite.

THE COURT: Aren't these witnesses fact witnesses?

MR. BASDEKIS: I do agree that they're fact witnesses, your Honor, and as a fact witness, they can provide certain testimony about the facts, historical facts. Take, for example, did this witness receive a copy of management projections. Well, that's a fact, yes or no. And as a fact witness, he can testify to that. Similarly, to get to one of the core matters, I'm at $3.8 million. We know the parties assigned a value of $3.8 million to the rollover equity interest. That's a fact also. But what's different is to take that second item, 3.8 million, you say it's assigned, but then for the witness to then go further and say, And I believe this is a reasonable number and represents a fair number in this case is an attempt to give an expert opinion on that and to look at the analysis that he performed in order to come to that conclusion of what the value of the rollover equity is, when that's clearly based solely on scientific, technical, or specialized knowledge. You can't do a business valuation without having that kind of expertise.

THE COURT: Is it your position that any statement by one of these witnesses about the value of Sallyport is expert testimony?

MR. BASDEKIS: About any kind of methodology to arrive

at a conclusion for what they believe the enterprise value, the answer to that is yes, your Honor, I do believe that's expert testimony.

We obviously put out our expert report. We have two expert witnesses; we put them out. And a month later, month and a half later, defense had an opportunity to present a witness to testify about those things. They picked Jim Hitchner. Now, Mr. Hitchner is going to testify about the $3.8 million, what he believes the reasonable value of the overall project was, the enterprise value. He can do all of those things. We have no qualm with Mr. Hitchner doing that. What we're saying is if you had wanted to also have Andy Smith, Tom Campbell, Doug Lake, and Scott Gold come in and give testimony about that, you should have disclosed it at the same time you disclosed Hitchner. Instead, they went with Hitchner, and so we shouldn't have to defend against basically five expert witnesses trying to back over expert witness testimony. The facts are fine, it's just when they take those facts and they put a scientific financial spin on it to come to a particular conclusion, Mr. Hitchner can do that, but these witnesses should not be allowed to do it.

THE COURT: But if your argument is that defendants undervalued DeBlasio's interest in the transaction, don't the defendants have to put on fact witnesses to show how they arrived at that value?

MR. BASDEKIS: I think they put on expert witnesses to say what the enterprise value is. I don't think it's a factual issue.

THE COURT: That's what this trial is all about. That's why we're having a trial. I think that your motion is really premature. You can raise objections if questions are posed seeking expert testimony, but it's premature to determine now whether defendants' fact witnesses will necessarily give expert testimony. It's got to be taken in context.

Mr. Waagner, will these witnesses be testifying generally about how a company is valued?

MR. WAAGNER: Your Honor, we're not planning to offer them as expert witnesses *per se*.

THE COURT: Would you just answer my question. Are these witnesses going to be testifying generally about how a company is valued?

MR. WAAGNER: I have a hard time giving a yes-or-no answer to that question because their testimony encompasses some of that scope, but we're not intending to offer their testimony as expert opinion on those subjects. Let me give you specifics to sort of put that in context. I think the main witness that really is addressed by this motion is Andy Smith. Andy Smith was a principal at the McLean Group who was retained by DC Capital Partners after the acquisition of Sallyport Global Holdings to do some what would be regarded as business

valuation practice, and he assisted in connection with the preparation of a purchase price allocation. The plaintiff has identified ten or 12 of his reports and draft reports as exhibits in this case. Those are subject to our separate motion *in limine*. And the plaintiff's expert, Mr. Risius, spends a great deal of time relying on the analysis that Mr. Andy Smith did and criticizing his analysis.

Our view is that we can't draw the line between Andy Smith's testimony as a fact witness and where he may delve into expert opinion, but that issue is going to be presented at the trial. That's why I think your Honor has it right that it's premature. To the extent that Andy Smith is going to be testifying about his reports and the contents of his analysis, Andy Smith ought to be able to explain why he did certain things. In our separate motion *in limine*, the plaintiff wants to have Andy Smith's reports admitted into evidence as admissions of fact, and they want to have those documents taken as true, admitted as fact, but deny Andy Smith the ability to explain them and illustrate why one may not lead to the conclusion that the plaintiff draws. That's all we're saying.

THE COURT: All right. Do you want to turn to your motions?

MR. WAAGNER: Yes, your Honor. Thanks.

We have two motions. The first one that I'll talk about is the question of these what we call third-party

declarations of value. There's the McLean reports, the drafts, and spreadsheets and whatnot that Andy Smith prepared that are part of that motion, but we also have the indications of interest that were submitted by third-party companies that were investigating a possible acquisition of Sallyport in 2010. We have the Jeffries presentations that were prepared in October, November of 2011. We have the McLean reports. We also have the McGladrey documents, spreadsheets and work papers that McGladrey prepared in connection with his audit of the acquisition after the acquisition.

Our concern with all of those documents is that they are hearsay and that the only reason that the plaintiff would offer them is to prove the truth of their contents. The indications of interest, for example, are inquiry letters, essentially, from third parties saying we're interested in pursuing a possible acquisition of these companies, and there are dollar figures stated in those letters. The plaintiff, in our view, wants to use those dollar figures as proof of what Sallyport was worth at the time. To the extent that they are third-party statements that have that information in them, they are clearly hearsay prepared by third parties out of court. There's no indication of trustworthiness with respect to those documents.

THE COURT: But in a bench trial, doesn't that really just go to the weight?

MR. WAAGNER: It doesn't go to the weight. It may go to the weight with respect to the expert analysis, and I want to point out to your Honor the decision that was cited in one of the briefs, the Williams v. United States case, the 2012 decision by Justice Alito. That's a case where the issue was whether the expert witness could testify to something that had not separately been offered and admitted into evidence. Ultimately, the court said yes, he could testify to that fact, but the court lays out a sequence of instructions for why that wouldn't be improper. The argument at the Supreme Court was you can't let the expert witness be a conduit for the admission of inadmissible testimony, and Justice Alito's opinion says, Yes, in cases where you have jury trials you have one set of issues and in cases where you have bench trials you have another set of issues. And you certainly trust the trial judge as the fact finder and as the arbiter of what weight to give evidence, but the instruction from the Supreme Court is in a case where the expert witness is relying on evidence that has not been separately admitted, there wouldn't be any basis to give any weight to that expert testimony at all.

What we're trying to do is point to the fact that these third-party indications of value are worthless in our view. They're not worthy of being admitted into evidence. They're not worthy of having Mr. Risius rely on them, etc. And the only purpose for the plaintiff identifying them as exhibits

and then trying to deem them admissions or business records and have them be used for any purpose is just so Mr. Risius can say, Here you go, my opinion is consistent with everybody else's reasonable opinions and the reason I know that they're reasonable is because all of these third parties came up with this same analysis.

THE COURT: Aren't documents from the McLean Group and McGladrey admissible under the case law about auditors being agents?

MR. WAAGNER: I don't think so, your Honor. And we have not objected to their final reports, recognizing that those reports would come into evidence on that basis. What we're trying to make a distinction on with respect to McLean and McGladrey is the drafts. There was a period of four or five months where these documents were works in progress, and numbers change, comments appear in them, and the only witness testimony about those drafts is Andy Smith's testimony that those drafts do not reflect my opinion. And so in our view, I understand why you might want to use drafts to cross-examine the witness on the credibility of a conclusion in the final report.

THE COURT: That all goes to weight though, doesn't it? You can challenge that at the trial.

MR. WAAGNER: But the concern that we have is that the admissibility of those documents without a witness to explain

them, they're admitted for any purpose if they're admitted, in essence.

THE COURT: They're your agent, aren't they?

MR. WAAGNER: The other distinction that I'd like to draw with respect to their being an agent is they're not just doing a task dictated by the principal. This is an expert analysis. You don't hire a business valuation expert to render an opinion on business valuation issues. Andy Smith's analysis is the main concern here, and Andy Smith's analysis is the analysis of an expert. I call up a plumber and say, Do I need to replace this pipe in my house, and the plumber says yes, I have one plumber that says yes and I have one plumber says no, the fact that I had one plumber say yes doesn't mean I admitted that the pipe needs to be replaced. That's the plumber's opinion. That's a very close analogy here.

Andy Smith was asked to give an opinion and to render a report that could be useful to the client in connection with their analysis. The final report is that. We have not objected to Andy Smith's final report being admitted into evidence. It's the drafts, and all of the Jeff Risius analysis draws from the drafts. In this spreadsheet, there's a cell that has the following figure and that figure means X, Y, and Z consequences flow from it. And all we're saying is without a witness there to explain that or respond to that, the prejudicial effect and the fact that those documents can't be

taken for what they appear to be is unfair. It's the hearsay problem principally, but it's also a problem of using expert opinion, which Andy Smith's analysis was. The Jeffries' analysis certainly would be analogous to the plumber, Here's what we think.

THE COURT: Jeffries is not analogous to a plumber. Jeffries was hired to represent DC Capital Partners, right? Isn't that an agency relationship?

MR. WAAGNER: The record is entirely unclear as to exactly why Jeffries was hired, what Jeffries did, etc. What we have in the record is four reports or presentations from Jeffries that purport to be sales presentations, and the testimony about them was that they were sales presentations. This isn't an expert analysis. It isn't an opinion. It isn't an admission. It's Jeffries trying to advocate that the company would be able to sold for a high price, and so it can't be taken as an admission or as evidence that the company was, in fact, worth that. And we've cited the cases that say that. The investment banker's opinions, the real estate valuation opinions are not evidence of value. They are, at best, an opinion of one person at one point in time as to what might be able to be achieved in the future.

We gave the example of a real estate agent putting your house up for sale for a million dollars and it's on the market for a year and you can't sell it for a million dollars.

Does that mean you admitted that the house is worth a million dollars? No.

THE COURT: Once again, that goes to weight, and this is a bench trial.

MR. WAAGNER: Part of the reason that we have to raise this issue ties in to the second motion, the second motion dealing with who is actually going to be here to testify. There isn't a Jeffries person that's going to be here necessarily. The only person that's identified on the plaintiff's witness list is a designated representative of Jeffries. We challenge the sufficiency of plaintiff's use of designated representative in 11 cases and then as well as the plaintiff's plan to take 25 *de bene esse* depositions at some point before the trial.

THE COURT: Look, we discussed this back in November. This was all about authenticity of documents, wasn't it?

MR. GLASSER: Yes, sir.

MR. WAAGNER: But our view is there's more to the question of authenticity and admissibility of these documents than just establishing that it was generated by somebody that worked for Jeffries. That doesn't meet the evidentiary burden in this case. There's too much opinion and there's too much conjecture. It's not an ordinary business record. It's not an admission of fact. It's a third party's statement of opinion, and without that witness to explain what it is and to be there

to be cross-examined about what conclusions can properly be drawn from that, the only thing we have is Jeff Risius, who is going to act as a conduit for the admissibility of this improper evidence. And that's the issue that we're really trying to address.

The final element of our motion on the witnesses, the plaintiff here is challenging the potential that there might be expert testimony from one or more of our fact witnesses. Plaintiff has identified three experts on its witness list, three experts who did not issue reports.

THE COURT: Forget about that.

MR. GLASSER: We're withdrawing it.

THE COURT: Right. They're out.

MR. GLASSER: Does the Court want to hear from the plaintiff, or is the Court satisfied? I can talk to each of those, the LOIs, Jeffries and McLean and McGladrey, if the Court would like to hear.

In respect of the indications of interest, your Honor, there were like eight of them between 90 and $110 million. They were received by our client, Tom Charron, as well as their client, the defendant. I do plan to put them in evidence with Tom Charron when he's testifying, and it informs why he believed windfall protection was important in this case for him because he was selling for 40 and he thought the company was at least worth a hundred, so it puts in context exactly why

there's a windfall protection clause at issue in the whole case. So that's the way I foresee the indications of interest coming into evidence from a man who received them, was an officer of the company at the time he received them. I don't think there's much to debate about those.

THE COURT: It's all a question of how reliable they are, and that will be a subject for cross-examination. There's no *per se* rule that would bar indications of interest to determine value, is there, Mr. Waagner?

MR. WAAGNER: I would cite two *per se* rules. One is the rule against hearsay and the other is the series of cases that we've cited from the Southern District, from the U.S. Supreme Court, and other places which directly address the question of whether unconsummated offers are evidence of value. The case law is uniform that they do not reflect evidence of that.

THE COURT: What about the cases that say in a bench trial, it's better to admit documents than exclude them because the Court knows what weight to give to them?

MR. WAAGNER: Your Honor, I certainly respect the power of the trial court to recognize the difference between evidence worthy of weight and evidence that's not worthy of weight. We haven't hidden the ball from the Court with respect to what these documents are, and certainly we're asking the Court to make that distinction. What's important from my

perspective is that we recognize those documents as not evidence that the company was worth 90 to $100 million, as Mr. Glasser suggests. That's the purpose that he's trying to offer them. That's the purpose that Mr. Risius cites them for.

THE COURT: He just said that he's offering it for the purpose of showing that this is why Mr. Charron wanted the special protection, because his state of mind was such that the company was worth more than a hundred million. Certainly it comes in for that purpose. What weight I'm going to give to it, whether it was reasonable for Mr. Charron to believe that, is what this trial is about.

MR. GLASSER: In respect, just to move down, if the Court wants to hear, McLean is obviously coming in because it is the source of the $3.8 million asserted value to the rollover equity. Jeffries, your Honor, was as of the next day. So the McLean report is as of June 29, 2011. The Jeffries presentation to the board is as of June 30, and it's a value 20 times higher. Now, our expert is actually below the Jeffries value by a substantial margin in this case, but I think that it is probative evidence as to what was going on at the time. They are literally 24 hours apart in as of valuation dates. And under Rule 703, our expert has looked at these things, has considered them. They are the normal type of thing an expert looks at. When an expert has two valuations on the very problem he's facing from two experts in the field, they would

be remiss not to look at them.

THE COURT: Anything else?

MR. GLASSER: And then McGladrey, you've already made our point, Judge, about it being the auditor's papers that are typically admissible.

THE COURT: What about all these *de bene esse* depositions?

MR. GLASSER: Your Honor, I have looked very hard at what we need. I plan to do this case in four positive witnesses. Mike O'Connor, the lawyer who did the SPA; Tom Charron, the client; two experts, and then adversely John DeBlasio and Pat DeBlasio. That would be our case. These things, if they can come in through my expert, then I don't need any *de bene esse* depos. If the issue is authenticity, then I would need to subpoena a Jeffries custodian of records to say that in response to our subpoena, they gave us the Jeffries report and, therefore, it's authentic. So the only ones at issue, if authenticity is at issue, is I would subpoena a corporate rep of BoNY, Jeffries, and McGladrey, who are all in New York, to testify that they received the subpoena, they gathered their records, they produced them and these are them. And then McLean, I think, is outside the power of the Court, so that would be the only *de bene esse*, and it would be a 15-minute deposition of a person to authenticate the records. That's it.

THE COURT: Is there really any dispute about the authenticity of the documents?

MR. WAAGNER: I don't think there is any dispute about the authenticity. The question is should we admit into evidence third-party declarations out of court that are clearly hearsay and opinions that, in my view, are entitled to so little weight they shouldn't be admitted in evidence at all. That's the reason I referenced the Williams case, which says that you can't allow Mr. Risius to be a conduit for this inadmissible evidence. And that's exactly what's going on here. Mr. Risius is going to say my opinion is reasonable because Jeffries came up with a much higher opinion. That is classic, in my opinion, It's reasonable because I said so.

THE COURT: All right. But Jeffries was hired to represent DC Capital. That's an agency relationship.

MR. WAAGNER: Your Honor, in my view, the record is not clear as to exactly the nature of the engagement between Jeffries and DC Capital. Certainly prepared that document.

THE COURT: Plaintiff will have to lay the foundation. I mean, you could bring somebody in from Jeffries to undermine the documents if they don't collapse of their own weight.

MR. WAAGNER: Just briefly, your Honor, in response to Mr. Glasser's comment on the witnesses that he intends to put his case through, that's part of the reason we raised this motion, because his witness list has 35 individuals on it.

THE COURT: We're down to four plus the DeBlasios.

MR. WAAGNER: Thank you.

THE COURT: You gentlemen have previously told me that you'll take four days to try this case. You're going to get four days to try this case because I'm starting a criminal jury trial on Monday, March 31. You're bringing people in from around the country, so part of the purpose of this argument today is to make sure that we're all on the same wavelength about how this trial's going to proceed.

In that regard, let me say the following. First of all, we'll start at 9:45 in the morning and we'll try the case until 5:00. We'll take an hour lunch, from one to two. We'll take a short midmorning and midafternoon recess. We'll work longer or start earlier if I feel it's necessary, so counsel should be prepared to work past 5:00.

Cross-examination of a witness will be wide open, so it will not be limited to the scope of direct, but redirect will be limited to the scope of cross, and so on. So don't plan on calling a witness twice. In other words, if the plaintiff calls Mr. DeBlasio, be prepared, Mr. Waagner, to examine Mr. DeBlasio fully on cross-examination, and that's how we'll proceed.

We're not going to have document dumping in this case into the record. I'm not going to receive into evidence any exhibit that isn't discussed by a witness because that just

invites too much mischief on appeal.

Don't run out of witnesses. If you run out, you'll rest. We'll move on.

At the conclusion of the trial, I'll have you submit on a schedule proposed findings of fact and conclusions of law. Each of you will make simultaneous submissions to me and then you'll have a very brief response to each other's submissions.

If you need access to any electronic material in the courtroom, make the appropriate arrangements. Notify my deputy so that it's provided so that there is no confusion about what's going to go on during the course of the trial.

Obviously, with respect to the defendants' motion to exclude Steinkamp, Sanna and Ziobrowski, that's withdrawn and a good thing because I grant it in a moment.

MR. WAAGNER: Your Honor, that motion was not withdrawn.

MR. GLASSER: No, no. I'm confessing it. I agree. We'll withdraw.

THE COURT: I heard him say it was withdrawn.

Didn't you withdraw it a few minutes ago?

MR. GLASSER: I withdrew the request to bring the witnesses in the face of a well pled motion, your Honor. I don't know that he withdrew his motion. I'm saying that I agree that the motion will knock off the witnesses.

THE COURT: All right.

MR. WAAGNER: I apologize. There's another motion *in limine* the plaintiff separately withdrew in writing, and I was just confused as to what you were talking about.

THE COURT: With respect to defendants' motion to exclude evidence of third-party declarations of value, that motion is denied. The evidence includes documents prepared by Jeffries LLC and the McLean Group, investment banks that were hired by DC Capital Partners, and by McGladrey, an auditor hired by DC Capital Partners. A statement offered against a party is admissible if it "was made by the party's agent or employee on a matter within the scope of that relationship and while it existed." Federal Rule of Evidence 801(d)(2)(D). "An agency relationship results from a manifestation of consent by one person to another that the other shall act on his behalf and subject to his control and the consent by the other to act." N.Y. Marine & General Insurance Company v. Tradeline, L.L.C., 266 F.3d 112, 122 (2d Cir. 2001). Courts in this district have held that a party's auditors are agents for the purposes of Rule 801(d)(2)(D). See MBIA Insurance Corp. v. Patriarch Partners VIII, LLC, 2012 WL 2568972 at *4 (S.D.N.Y. July 3, 2012); Four Joint Boards Health & Welfare & Pension Funds v. Penn Plastics, Inc., 864 F.Supp. 342, 352, n. 14 (S.D.N.Y. 1994). Jeffries was engaged to help sell KS International LLC and was therefore similarly an agent.

Of course, this will be subject to proof at trial,

especially in light of Mr. Waagner's comments that there's a dispute as to whether Jeffries was hired to represent DC Capital Partners. So those documents as well as the indications of interest in purchasing Sallyport are admissible under Rule 803(6). They're business records prepared in the regular course of business. Defendants argue that Rule 803(6) applies only to clerical documents void of subjective opinions, but the very text of Rule 803(6) states it applies to "a record of an act, event, condition, opinion, or diagnosis."

Now, defendants also offer a number of reasons to doubt the reliability of the documents at issue. If this were a jury trial, those objections might require close scrutiny, but to the extent that any document is unreliable or does not fit comfortably within 801(d)(2)(D) or 803(6), defendants' motion is still denied because it's a bench trial. "It may be the more prudent course in a bench trial to admit into evidence doubtfully admissible records and testimony based on them," so says the Second Circuit, which grades my papers. Van Alen v. Dominick & Dominick, Inc., 560 F.2d 547, 552 (2d Cir. 1977). See also Dreyful Ashby, Inc. v. S/S "ROUEN", 1989 WL 151685 at *2 (S.D.N.Y. Dec. 12, 1989).

In a bench trial, the district court can hear relevant evidence, weigh its probative value, and reject any improper inferences. Schultz v. Butcher, 24 F.3d 626, 632 (4th Cir. 1994). On cross-examination, this Court is confident that the

defendants can demonstrate why any particular document may not be a reliable indication of value or is otherwise unworthy of the Court's consideration. Both parties are free to raise their objections at trial where I'll be able to consider them in context.

The time for sparring in this case, and there has been a lot of it, is nearing an end, and I want to tell you that I expect the trial to proceed smoothly, without unending arguments about things that are ridiculous, like 40 *de bene esse* depositions or experts who might be called in rebuttal but never filed expert reports, or other things like that.

I want it to be a pleasant experience for all of us. That's going to be in your hands.

Anything further?

MR. GLASSER: Yes, your Honor. Since I've spent the week before this hearing making the hard calls about who we're really going to call and how many witnesses and how to get this done in the time the Court has provided, I don't want to put Mr. Waagner on the spot, but I would appreciate it if sometime in the reasonable near future, he could do the same for me, tell me who they're going to call and what witnesses they're going to have. Then we can make the trial move faster, have everything ready, no fumbling around. So I just make that request.

THE COURT: Do you want to give me a hint at this

juncture as to who you're going to call, Mr. Waagner, other than the six people who have been identified here by plaintiff?

MR. WAAGNER: My basic plan is set out in our witness list in the pretrial order, John DeBlasio, Pat DeBlasio, Mr. Hitchner. I've also included Tom Campbell and Doug Lake, Tom Campbell and Doug Lake both from DC Capital Partners. At this point, I'm debating whether to have one of the lawyers from Cohen & Grigsby, who was involved in this agent litigation, testify. It would probably Morgan Hanson if that's the case. Andy Smith will probably testify from the McLean Group. And possibly Peter Phelps, who was the CFO of Sallyport.

THE COURT: All right.

MR. GLASSER: Very good. Thank you, your Honor.

Thank you, Mr. Waagner.

THE COURT: Obviously, if your list changes, I think you should let the plaintiff know, and it would be helpful to the Court let's say a week before trial to get the parties' final, real lists. I expect the parties to share with each other the order in which they're going to call people so that there will be no surprises on any of that. If someone has travel difficulties, we'll interrupt testimony. We'll work with witnesses to try to accommodate their schedules, but it's in all of our interests to get the case tried and done in the time that's been allotted.

Are there any other questions about how the trial's going to proceed?

MR. GLASSER: The only one I would have, your Honor, is if the Court prefers to just have the exhibits electronically on a jump drive or something, or do you physically want them moving around the courtroom?

THE COURT: Look, if you want to set up computer equipment, we do it all the time, and it can be a lot easier for a jury. Judging from the summary judgment motions in this case, there's a lot of paper, but most of it's not going to be what this case turns on, so let's focus on what is really important in the case.

Are all of these witnesses going to be testifying live?

MR. GLASSER: Yes, sir. I believe so.

THE COURT: All right. If there's any deposition testimony that's going to be offered that's not being offered for impeachment purposes, it's going to have to be read in court. In other words, just like there won't be document dumps, there won't be deposition dumps into the record.

Any other questions about how the trial's going to proceed?

MR. GLASSER: None from the plaintiff, your Honor.

MR. WAAGNER: None from the defendants, your Honor. Thank you.

THE COURT: All right. I'll see you all on March 24. Get me a letter about anything else that might arise by March 17, starting with what the order of witnesses is going to be, a final exhibit list, and you all know there are many exhibits that you're both going to be dealing with. Just agree on one set of numbers so we're only admitting an exhibit once, and I don't care whose exhibit it is. The plaintiff should use numbers, the defendants should use letters. Premark them, and if you want to do it electronically, that's fine. If you're bringing electronic equipment in, you need to obtain an order from me in the form that's provided on the court's Web site. Be mindful of that. All right?

MR. GLASSER: Yes, sir. Thank you.

THE COURT: You all came to New York on a good weather day today. You're lucky. Maybe you could be lucky and settle the case. Have a good weekend.

(Adjourned)